A

CHIENG CHUNG TING v. PP

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
BALIA YUSOF WAHI JCA
TENGKU MAIMUN JCA
B [CRIMINAL APPEAL NO: Q-05-39-2009]
8 DECEMBER 2014

CRIMINAL LAW: *Dangerous Drugs Act 1952 – Section 12(2) & 39B(1)(a) – Trafficking and possession – Conviction and sentence – Appeal against –*
C *Amendment of charge – Whether s. 158 of Criminal Procedure Code complied with – Reliance upon presumption of possession under s. 37(d) in opening statement of case – Whether precluded presenting evidence of actual possession – Whether occasioned unfairness and injustice upon appellant – Surveillance done by police team from a hotel room – Evidence showing movements of appellant before discovery*
D *of drugs unchallenged – Whether appellant had exclusive control and use of unnumbered room where drugs were found – Whether appellant was found holding box containing drugs – Whether High Court considered its duty under s. 182A Criminal Procedure Code – Whether High Court erred in convicting appellant*

E ***CRIMINAL PROCEDURE:*** *Appeal – Conviction and sentence – Trafficking and possession of drugs – Amendment of charge – Whether s. 158 of Criminal Procedure Code complied with – Reliance upon presumption of possession under s. 37(d) in opening statement of case – Whether precluded presenting evidence of actual possession – Whether occasioned unfairness and injustice upon appellant –*
F *Surveillance done by police team from a hotel room – Evidence showing movements of appellant before discovery of drugs unchallenged – Whether appellant had exclusive control and use of unnumbered room where drugs were found – Whether appellant was found holding box containing drugs – Whether High Court considered its duty under s. 182A Criminal Procedure Code – Whether High Court*
G *erred in convicting appellant – Dangerous Drugs Act 1952, ss. 12(2) & 39B(1)(a)*

The accused ('the appellant') was charged with the offence of trafficking dangerous drugs, to wit 406.2 grams of cannabis under s. 39B(1)(a) Dangerous Drugs Act 1952 ('the Act') and possession of dangerous drugs, to wit, 2.61 grams of methamphetamine under s. 12(2) of the same. The police
H received information from the public that there was a man in Room 202, Hotel Sri Dagang Inn, who was suspected to be involved in drugs. The police selected Room 204 to conduct surveillance on Room 202, and at about 7pm on 3 February 2003, a man was seen coming out of Room 202 heading to the storeroom ('the unnumbered room'). When the door to the storeroom
I was pushed open, the police saw the appellant squatting, facing the wall and holding the box ('exh. P41') later found to contain the dangerous drugs. The appellant's case was that he was about to get a towel from the storeroom of

the hotel when two males identified themselves as policemen and detained the appellant. Thereafter, according to the appellant, he was brought to the storeroom by the policemen where he was shown a package with dried leaves inside. At the end of the trial, the appellant was convicted and sentenced on both charges. Hence, this appeal. The issues that arose were (i) whether the High Court failed to exercise its discretion under s. 158(1) of the Criminal Procedure Code ('CPC'); (ii) the High Court had concluded that the appellant was in actual possession of the exh. P41without taking into account that the Deputy Public Prosecutor ('DPP') in his opening speech had committed the prosecution to relying on the presumption of possession under s. 37(d) of the Act; (iii) that it was impossible that the police were making observations from Room 204 because the sketch plan showed that Room 202 was out of the line of sight of anyone looking through the peephole of Room 204; (iv) whether the appellant had exclusive control and use of the unnumbered room; (v) whether the appellant was holding exh. P41 when the police party entered the unnumbered room; and (vi) whether the High Court had erred in its decision to convict the appellant.

Held (dismissing appeal; affirming conviction and sentence)
Per Abdul Wahab Patail JCA delivering the judgment of the court:

(1) The court had amended the charge P2 pursuant to s. 158(1) of the CPC to reflect the proven facts *ie*, by deleting the word "storeroom" and substituting it with the words "unnumbered room" in such charge, which was explained to the appellant to which he understood and maintained his plea of not guilty. Therefore, s. 158 of the CPC had been complied with. Section 158(2) provides that every such alteration or addition shall be read and explained to the accused. It does not require that a plea be taken again. If, after the amendment, an accused does not inform the court that he is changing his plea, it means he is maintaining his plea of not guilty. There was no merit in the submission that the High Court did not exercise its discretion under s. 158(1) of the CPC. (paras 16, 18 & 19)

(2) The opening in this case outlined the nature of the case and the evidence being presented by the prosecution to the court. The findings of fact and inferences that may be drawn arose from the assessment made after such evidence was presented, tested and submissions thereon have been heard. The prosecution was outlining that it could rely on the presumption but it had other direct and indirect evidence of possession. In other words, if direct evidence of possession failed, the prosecution would rely upon the presumption. This would not occasion any unfairness or injustice upon the appellant. Further, the fact that reliance upon the presumption of possession under s. 37(d) was mentioned in the opening statement did not preclude presenting evidence of actual

A possession being adduced where the opening statement disclosed reliance also on evidence of actual possession. The record did not show any difficulty or disadvantage to the appellant in testing the evidence of actual possession. That being the case, it could not preclude the High Court from making a finding upon it. (paras 28 & 31)

B **(3)** Even if Room 204 was occupied by another person, it did not preclude the police from accessing it in the course of investigation or surveillance of criminal activity. The record also showed that the evidence that they observed on Room 202 from Room 204 was not challenged in cross-examination. Thus, it was not so much the door of Room 202 that they C were watching, but the movements of the person or persons who came in and out of Room 202. From the sketch plan, that was not impossible. (paras 36 & 37)

(4) The High Court had clearly considered the question of access to the unnumbered room. The facts showed that the appellant had obtained the D key from PW1 to keep his things and had refused to give the key to PW1 when the latter asked for its return. PW1 could not enter the unnumbered room as it was at all times under lock and key when the appellant was in possession of the key. No laundry belonging to the appellant was found in the unnumbered room which was clean and tidy; E the only items in the unnumbered room were exh. P41 and its contents, the folded chair exh. P7 and other items in the photograph exh. P8. The appellant was also seen entering the unnumbered room after he came out of Room 202 and was seen holding exh. P41 and its contents. The appellant was also nervous, scared, surprised, speechless and shivering F when confronted by the police team. (paras 41 & 42)

(5) The appellant's version was that he never held the box while the police witnesses testified that they saw the appellant holding the box P41 when they entered the unnumbered room and that the appellant then dropped the box. Upon this foundation, the submission was made that the police G had the opportunity to lift fingerprints from the box and its contents. The submission for the appellant acknowledged that the search list was incomplete and not definitive as well. It would therefore carry little weight, if at all, to support the submission for the appellant's version. Findings and inferences are drawn from the evidence before the court. H Adverse inferences from non-production of evidence were based upon such evidence being established: (a) to exist and (b) is being withheld. There was no evidence of withholding in this case. (paras 47 & 48)

(6) The record of proceedings and the grounds of judgment showed that the High Court had considered its duty under s. 182A of the CPC. The High I Court had heard and considered the prosecution's case, the defence and submissions, before making a finding whether the prosecution had proved its case beyond reasonable doubt, and to convict the appellant

on both charges. Scrutiny of the appreciation of the evidence and reasoning of the High Court showed attention to and consideration of evidence that was as meticulous as it was detailed. There was no error by the High Court, and the grounds raised held no merit. (para 51)

Bahasa Malaysia *Translation Of Headnotes*

Tertuduh ('perayu') telah dipertuduh dengan kesalahan pengedaran dadah berbahaya, iaitu 406.2 gram kanabis di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('Akta') dan milikan dadah berbahaya, iaitu 2.61 gram methamphetamine di bawah s. 12(2) Akta yang sama. Polis telah menerima maklumat daripada pihak awam bahawa terdapat seorang lelaki di Bilik 202, Hotel Sri Dagang Inn, yang disyaki terlibat dengan dadah. Polis telah memilih Bilik 204 untuk menjalankan pengawasan ke atas Bilik 202, dan pada pukul 7 malam pada 3 Februari 2003, seorang lelaki dilihat keluar dari Bilik 202 menuju ke arah bilik stor ('bilik yang tidak bernombor'). Apabila pintu bilik yang tidak bernombor dibuka, polis melihat perayu sedang mencangkung menghadap dinding sambil memegang sebuah kotak ('eks. 41') yang kemudiannya didapati mengandungi dadah berbahaya. Kes perayu adalah bahawa dia sedang mengambil tuala dari bilik stor hotel tersebut apabila dua orang lelaki telah memperkenalkan diri mereka sebagai anggota polis dan telah menahan perayu. Kemudian, menurut perayu, dia telah dibawa ke bilik stor oleh pihak polis di mana bungkusan yang mengandungi daun-daun kering itu telah ditunjukkan kepadanya. Di akhir perbicaraan, perayu telah disabitkan dan dihukum ke atas kedua-dua pertuduhan itu. Oleh itu, rayuan ini. Isu-isu yang timbul adalah (i) sama ada Mahkamah Tinggi gagal untuk melaksanakan budi bicaranya di bawah s. 158(1) Kanun Tatacara Jenayah ('KTJ'); (ii) Mahkamah Tinggi telah memutuskan bahawa perayu mempunyai milikan sebenar ke atas eks. P41 tanpa mengambil kira bahawa Timbalan Pendakwa Raya ('TPP') dalam ucapan pembukaannya telah membuat dakwaan bergantung kepada anggapan milikan di bawah s. 37(d) Akta; (iii) bahawa adalah agak mustahil untuk pihak polis membuat pemerhatian dari Bilik 204 kerana pelan lakaran menunjukkan Bilik 202 terkeluar daripada garis penglihatan sesiapa yang mengintip melalui lubang intipan Bilik 204; (iv) sama ada perayu mempunyai kawalan dan kegunaan eksklusif bilik yang tidak bernombor itu; (v) sama ada perayu sedang memegang eks. P41 apabila pihak polis memasuki bilik yang tidak bernombor itu; dan (vi) sama ada Mahkamah Tinggi telah terkhilaf dalam keputusannya untuk mensabitkan perayu.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)
Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

(1) Mahkamah telah meminda pertuduhan P2 menurut s. 158(1) KTJ untuk menggambarkan fakta-fakta yang telah dibuktikan iaitu dengan memadamkan perkataan "storeroom" dan menggantikannya dengan perkataan "unnumbered room" dalam pertuduhan itu, yang telah

dijelaskan kepada perayu yang memahaminya dan mempertahankan rayuannya bahawa dia tidak bersalah. Oleh itu, s. 158 KTJ telah dipatuhi. Seksyen 158(2) memperuntukkan bahawa setiap perubahan atau tambahan sedemikian harus dibaca dan dijelaskan kepada tertuduh. Ia tidak memerlukan satu akuan diberikan lagi sekali. Jika, selepas pindaan, tertuduh tidak memaklumkan kepada mahkamah bahawa dia akan meminda akuannya, bermaksud dia akan mengekalkan akuan tidak bersalahnya. Tiada merit dalam hujahan bahawa Mahkamah Tinggi tidak melaksanakan budi bicaranya di bawah s. 158(1) KTJ.

(2) Pembukaan kes ini telah menggariskan keadaan kes dan keterangan yang telah dibentangkan oleh pihak pendakwaan di mahkamah. Dapatan fakta dan kesimpulan yang dicapai terhasil daripada penilaian yang dibuat selepas keterangan dibentangkan, diuji dan hujahan-hujahan didengar. Pihak pendakwaan telah merangkakan bahawa ia boleh bergantung kepada anggapan tetapi ia mempunyai keterangan secara langsung dan tidak langsung milikan. Dengan kata lain, jika keterangan langsung milikan gagal, pihak pendakwaan boleh bergantung kepada anggapan. Ini tidak akan menyebabkan ketakwajaran atau ketidakadilan ke atas perayu. Selanjutnya, fakta bahawa pergantungan pada anggapan milikan di bawah s. 37(d) disebut dalam pembukaan pernyataan tidak menghalang pembentangan keterangan milikan sebenar dikemukakan di mana pembukaan pernyataan mendedahkan pergantungan juga atas keterangan milikan sebenar. Rekod tidak menunjukkan sebarang kesukaran atau kelemahan kepada perayu dalam menguji keterangan milikan sebenar. Dengan itu, ia tidak boleh menghalang Mahkamah Tinggi daripada membuat satu dapatan atasnya.

(3) Jika Bilik 204 diduduki oleh orang lain, ia tidak menghalang pihak polis dari menggunakannya semasa siasatan atau pemerhatian aktiviti jenayah. Rekod juga menunjukkan bahawa keterangan yang telah diperhatikan atas Bilik 202 dari Bilik 204 tidak dibantah semasa soal balas. Oleh itu, ia bukan Bilik 202 yang mereka sedang perhatikan, tetapi pergerakan orang atau orang-orang yang keluar masuk Bilik 202. Dari pelan lakar, itu tidak mustahil.

(4) Mahkamah Tinggi telah dengan jelasnya mempertimbangkan persoalan akses kepada bilik yang tidak bernombor. Fakta-fakta menunjukkan bahawa perayu telah memperolehi kunci daripada PW1 untuk menyimpan barangannya dan enggan untuk memberikan kunci kepada PW1 apabila PW1 meminta ia dipulangkan. PW1 tidak boleh memasuki bilik yang tidak bernomnor itu kerana ia pada setiap masa dikunci apabila perayu mempunyai milikan ke atas kunci. Tiada cucian baju kepunyaan perayu dijumpai dalam bilik yang tidak bernombor itu yang berada dalam keadaan bersih dan kemas; item-item yang terdapat dalam bilik tidak bernombor itu adalah eks. P41 dan kandungannya, satu kerusi berlipat eks. P7 dan item-item lain yang terdapat dalam

gambar eks. P8. Perayu juga dilihat memasuki bilik yang tidak bernombor selepas dia keluar dari Bilik 202 dan dilihat memegang eks. P41 dan kandungannya. Perayu juga dalam keadaan gementar, takut, terkejut dan terdiam apabila berhadapan dengan pasukan polis.

(5) Versi perayu adalah bahawa dia tidak pernah memegang kotak tersebut tetapi saksi bagi pihak polis memberikan keterangan bahawa mereka melihat perayu memegang kotak P41 apabila mereka memasuki bilik yang tidak bernombor dan perayu telah menjatuhkan kotak itu dari genggamannya. Atas asas ini, hujahan yang dibuat adalah bahawa pihak polis berpeluang untuk mendapatkan cap jari dari kotak dan kandungannya. Hujahan bagi pihak perayu mengakui bahawa senarai carian tidak lengkap dan bukan muktamad. Oleh itu, ia tidak memberi kesan untuk menyokong hujahan versi perayu. Dapatan dan kesimpulan dibuat daripada keterangan yang dikemukakan kepada mahkamah. Inferensi yang bertentangan daripada keterangan yang tidak dikemukakan adalah berdasarkan apa-apa keterangan yang dibuktikan: (a) wujud dan (b) ditahan. Tiada keterangan yang menunjukkan terdapat keterangan yang ditahan dalam kes ini.

(6) Rekod prosiding dan alasan penghakiman menunjukkan bahawa Mahkamah Tinggi telah mengambil kira kewajipannya di bawah s. 182A KTJ. Mahkamah Tinggi telah mendengar dan mempertimbangkan kes pendakwaan, kes pembelaan dan hujahan-hujahan yang diberikan, sebelum memutuskan sama ada pihak pendakwaan telah membuktikan kes melampaui keraguan munasabah, dan mensabitkan perayu ke atas kedua-dua pertuduhan tersebut. Penelitian penghayatan keterangan dan dapatan-dapatan Mahkamah Tinggi menunjukkan perhatian dan pertimbangan keterangan dibuat dengan teliti dan terperinci. Tiada kekhilafan oleh Mahkamah Tinggi, dan alasan-alasan yang telah dibangkitkan tidak mempunyai merit.

Case(s) referred to:

Abdullah Jacomah v. PP [2002] 8 CLJ 1 HC ***(refd)***
Ayoromi Helen v. PP [2005] 1 CLJ 1 CA ***(refd)***
Azizan Yahaya v. PP [2012] 8 CLJ 405 CA ***(refd)***
Chang Lee Swee v. PP [1984] 1 LNS 134 HC ***(refd)***
Dato Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10 FC ***(refd)***
Gooi Loo Seng v. PP [1993] 3 CLJ 1 SC ***(dist)***
Miller v. Minister of Pensions [1947] 2 All ER 372 ***(refd)***
Mohamed Shariff v. PP [1964] 1 LNS 114 HC ***(refd)***
Muhammed Hassan v. PP [1998] 2 CLJ 170 FC ***(refd)***
PP v. Ahmad Abdul Razak [2010] 1 LNS 105 HC ***(refd)***
PP v. Kenneth Fook Mun Lee & Another Appeal [2006] 1 CLJ 499 CA ***(refd)***
PP v. Saimin & Ors [1971] 1 LNS 115 HC ***(refd)***
PP v. Sam Kim Kai [1960] 1 LNS 99 HC ***(refd)***
Wjchai Onprom v. PP [2006] 3 CLJ 724 CA ***(dist)***

Legislation referred to:
Criminal Procedure Code, ss. 158(1), (2)
Dangerous Drugs Act 1952, ss. 12(2), 37(da), 39A(2), 39B(1)(a), (2)

For the appellant - Ranbir Singh Sangha; M/s Ranbir S Sangha & Co
For the prosecution - Awang Armadajaya Awang Mahmud; DPP

[Editor's note: For the High Court judgment, please see Chieng Chung Ting v. PP [2012] 1 LNS 1283.]

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Wahab Patail JCA:

[1] The accused Chieng Chung Ting ('the appellant') appealed to this court against his convictions and sentences upon the following charges:

First Charge (exh. P2)

(a) That you on the 7th day of February, 2003 at about 7.15 p.m., in a storeroom at Level 2 of Sri Dagang Inn, Taman Sri Dagang, Bintulu, in the District of Bintulu, in the State of Sarawak, on your behalf, did traffic in dangerous drugs, to wit, 406.2 grams of Cannabis, and that you thereby committed an offence under section 39B(1) (a) of the Dangerous Drugs Act, 1952 punishable under section 39B(2) of the same Act.

Second Charge (exh. P2B)

(b) That you on the 7th day of February, 2003 at about 7.40 p.m., in Room 202 on Level 2 of Sri Dagang Inn, Taman Sri Dagang, Bintulu, in the District of Bintulu, in the State of Sarawak, in the possession of dangerous drugs, to wit, 2.61 grams of Methamphetamine and that you thereby committed an offence under section 12(2) of the Dangerous Drugs Act, 1952 punishable under section 12(3) of the same Act.

Background

[2] The High Court reproduced between pp. 4 to 14 (Supp RR4:4-14) of the grounds of judgment, the statement of the prosecution case in the submissions on behalf of the Public Prosecutor at RR4:616-626.

[3] In his opening statement, the Deputy Public Prosecutor set out the prosecution case as follows (see RR1:2-3):

The Accused faces 2 charges as in P2 and P2B.

For the 1st charge in P2 - the prosecution would adduce evidence that on 7/2/03 at about 7.15 p.m. in a store room at 2nd Floor of Sri Dagang Inn, Taman Sri Dagang in Bintulu that the Accused was in possession of 406.2 gm of cannabis thus trigger legal presumption under section 37(d)

Dangerous Drugs Act on the *mens rea*.

On the issue of *actus reus* the prosecution rely on trafficking the prescribed drug in section 2 of Dangerous Drugs Act.

The prosecution will establish the offence in 1st charge (P2) by way of direct and circumstantial evidence including documentary exhibits.

The prosecution will also establish the cannabis is a dangerous drugs as defined in the Act.

For 2nd charge (P2B) - it will be evidence of the prosecution that the Accused was the occupier of Room 202, thus in possession of the drug as in section 37(b) Dangerous Drugs Act.

The prosecution will also prove by way of direct and circumstantial evidence as well as documentary evidence. The drug as stated in the charge is a dangerous drug in Dangerous Drugs Act listed in the 1st Schedule.

We wish to call our witness.

The Prosecution Version

[4] The prosecution version was that the police received information from the public that there was a man in room 202, Hotel Sri Dagang Inn, suspected to be involved in drugs. Police selected Room 204 to conduct surveillance on room 202. At about 7pm, D/Cpl Mianus saw a man coming out of room 202, went downstairs and returned five minutes later to room 202, then came out again, went in the direction of room 201 and turned left. SP Gabriel ('SP5') told the High Court that when the door to the storeroom was pushed open, he saw the appellant squatting, facing the wall, holding the box later found to contain the dangerous drug cannabis.

The Defence Version

[5] The defence version of the facts is found in the appellant's cautioned statement at exh. D3(A) and D5. The material part of it is that he was staying in room 202 and was about to get a towel from the store room of the hotel when two Malay males identified themselves as policemen and detained the appellant. Thereafter the appellant was brought to the storeroom by the policemen and where the appellant was shown a package. The package was opened and the appellant saw dried leaves in the said package.

At End of Prosecution Case

[6] At the end of the prosecution case, having heard witnesses testified on the prosecution version and tested by the defence and the submissions, the High Court ruled as follows (see RR4: 529-530):

RULING

There are 2 cases with one charge each heard jointly before me, therefore based on the evidence relevant to each case (charge), I have to consider them separately for the purpose of my findings at the end of the

A prosecution's case. (For convenience both counsels ie, the prosecution and defence had referred to them as 1st charge and 2nd charge, of which I intend to do the same).

As for the 1st Charge I ruled that the non-calling of SI Walter Ayub and Wong Kit Tak and Ling Tai Lai did not attract the adverse inference as B without their evidence there is sufficient *prima facie* evidence adduced by the prosecution. It also applies to the non-calling of lab assistants in the analysis of the drugs concerned. I therefore call upon the Accused to enter on his defence on the 1st charge (P2) as amended.

As for the 2nd charge, my findings is the same as above and therefore C I also called upon the Accused to enter his defence on the 2nd charge [P2(B)]

[7] At the end of the trial, the appellant was convicted and sentenced on both charges as follows:

first Charge

D

(a) conviction and sentence to the mandatory death penalty under s. 39B(2), Dangerous Drugs Act 1952 ('DDA 1952') for the offence under s. 39B(l)(a), DDA 1952 of trafficking in 406.2 grams of cannabis; and

E second Charge

(b) conviction and sentence of five years imprisonment and RM100,000 fine (in default 20 months imprisonment) under s. 12(3) DDA for possession of 2.61 grams of methamphetamine, an offence under s. 12(2) of DDA 1952.

F

The Appeal

[8] Before this court, the grounds submitted upon by the appellant was in the following order as follows:

(a) Grounds 25, 26, 27 and 28: the charges.

G

(b) Grounds 2, 7, 9 and 12: possession.

(c) Grounds 3, 10, 14, 15, 17, 18, 32 and 33: Whether the police raiding party occupied room 204.

(d) Grounds 3, 4, 5, 6, 13 and 19: Exclusive access, use, care and H management of the unnumbered room.

(e) Ground: oblique motive/was the appellant holding the box when the police party entered the unnumbered room.

(f) Ground: the defence case.

I

[9] We address these grounds below.

Grounds 25, 26, 27 And 28: The Charges

[10] It was submitted that:

> 8. The ROA shows that only the 3 charges at Vol. 5, pages 708, 709 and 710 were ever tendered and marked as exhibits but P2(A) was never tendered and read and explained to the Accused and is marked as an exhibit.
>
> 9. It can be seen from ROA, Vol. 4, page 529, Lines I to 4, that the learned Deputy Public Prosecutor applied to amend the 1st charge. It is stated as follows:
>
> "Application by DPP to amend the 1st charge by substituting the word "store room" to "unnumbered room" is allowed. The amended 1st charge is - explained to Accused."
>
> ...
>
> [11] Since an amendment was allowed, the amended charge sheet must be tendered and signed by the Deputy Public Prosecutor and marked as an exhibit. A perusal of the ROA shows that there is no document referred to as the amended first charge which is signed by the Deputy Public Prosecutor and which is marked as an exhibit. As such, it cannot be said that P2 was ever amended or that it was done with the authorisation of the Deputy Public Prosecutor. Therefore the accused cannot possibly be convicted on the first amended charge because it does not exist.
>
> ...
>
> [14] As is quoted in para. 9 above, it was the prosecution which applied for the amendment to P2 therefore the prosecution should tender the charge. This was never done. It is submitted that since the Prosecution applied for the amendment, the learned High Court did not exercise his discretion under s. 158(1) of the Criminal Procedure Code.
>
> [15] Vol. 4, p. 52, lines 4 and 5, show that the alleged first charge was only explained to the accused and that the accused understood the same. There was never any plea entered as stated by the learned High Court Judge.

[11] The submission on this ground was then summarised as follows:

> 16. The situation can be summarized as follows:
>
> (a) There was no amended 1st charge tendered.
>
> (b) Therefore the Prosecution could not have authorized or sanctioned such an amended charge.
>
> (c) In the absence of the physical charge sheet, the Accused is prejudiced in that the Accused is not able to refer to the ingredients of the charge.

A (d) The Accused cannot be expected to construct his own charge by adopting words from Exhibit P2 and imagine where to slot in the words "unnumbered". A fresh charge sheet must be presented by the prosecution and tendered and marked as an exhibit.

(e) The prosecution applied to amend the charge, therefore the
B burden to tender the amended charge is on them.

(f) In the absence of the amended charge, the Accused ought not to be convicted of an incomplete charge that cannot be physically seen.

(g) The fact that the Accused did not enter a plea shows that he
C did not in actual fact see the purported amended charge and understand the same.

(h) The procedural errors deprived the Accused the chance of re-calling any witness in the context of the altered or amended charge.

D (i) Even if it is found that the learned High Court Judge had amended the charge. It is submitted that the learned High Court Judge had failed to draft the amended charge to the detriment of the Accused.

(j) The defects are so great that they are not curable under section
E 422 of the Criminal Procedure Code.

[12] The "3" charges are exhibited as exhs. P2, P2A and P2B (RR5:708-710 respectively). The submission for the appellant at para. 8 did not complain about the first charge at exh. P2 being not read but that exh. P2A which was amended but never tendered read and explained to the appellant
F (see RR1:2). The second charge upon which the appellant was convicted for possession is at exh. P2B. Exhibit P2B originated from the charge at exh. P2A which was never read and explained to the appellant (see RR1:2).

[13] RR1:1-2 shows that (a) exh. P2 the charge under s. 39B(l)(a) Dangerous Drugs Act and b) exh. P2B the charge under s. 12(2) Dangerous
G Drugs Act were read and explained through an interpreter to the accused, who understood the charges as read and explained by the court interpreter, and claimed trial to both charges in P2 and P2B. The counsel sought adjournment to consult with his client (RR1:3), after which the court resumed. The record shows that the defence counsel referred to P2 and
H informed the High Court he had no further contention (RR1:3).

[14] The record (RR4:529) shows that the application to amend the first charge was made immediately before ruling as to whether there is no case to answer. The application was allowed, and it is recorded:

I The amended 1st charge - explained to the Accused.

The Accused: Understood that.

[15] It is folly to imagine the interpreter explaining an amended charge without there being an amended charge.

[16] The grounds of judgment accordingly (Supp RR:32) showed the following:

> In the circumstances, this Court amended the charge P2 pursuant to Section 158(1) of the CPC to reflect the proven facts i.e. by deleting the word "storeroom" and substitute it with the words "unnumbered room" in such charge .... This amendment was explained to the Accused to which he understood and maintained his plea of not guilty.

[17] Further, the ruling at para. 6 above shows that the reference to first charge and second charge as used was due to the usage by the counsels and which the High Court employed for convenience.

[18] In our view, therefore, s. 158 of the CPC had been complied with. Section 158(2) provides only that every such alteration or addition shall be read and explained to the accused. It does not require that a plea be taken again. If, after the amendment, an accused does not inform the court that he is changing his plea, it means he is maintaining his plea of not guilty. We note it is not the case for the accused that if asked as to his plea on the amended charge he would have pleaded guilty and he has been denied the opportunity to gain a mitigating factor for consideration.

[19] We, therefore, hold there was no merit in the submission that the High Court did not exercise its discretion under s. 158(1) of the CPC and dismissed this ground of appeal.

Grounds 2, 7, 9 and 12: Possession

[20] The foundation of the submissions on this ground is that the DPP stated in his opening statement that "... the accused was in possession of 406.2 gm of cannabis thus trigger legal presumption under s. 37(d) Dangerous Drugs Act on the *mens rea*".

[21] The argument for the appellant laid out at p. 10 of the written submissions may be summed up as follows:

> (1) [The High Court] had concluded that the Accused was in actual possession of the box (Ex P41) without taking into account that the learned DPP in his opening speech had committed the Prosecution to relying on the presumption of possession under section 37(d) of the DDA 1952 when he uttered the words "... thus trigger the legal presumption under Section 37(d) Dangerous Drugs Act on the *mens rea*".
>
> (2) This fact shows that the prosecution's witnesses when testifying are no longer credible when they gave evidence incriminating the Accused of being in actual possession.
>
> (3) The learned Trial DPP must have been aware of something for him to have made such comments in his opening speech and there after the witnesses must have departed from their initial evidence recorded in the investigation papers thereby affecting their credulity.

(4) It is submitted that once the learned Trial DPP conceded in his opening speech that the prosecution would rely on the presumption of possession under section 37(d) of the DDA 1952 then it would mean that if the prosecution is still pursuing the charge for trafficking drugs then they would be asking the Courts to rely and invoke the presumption possession under section 37(d) of the DDA to invoke the presumption of trafficking under section 37(da) of the DDA. In short the application of a presumption upon presumption. This is specifically prohibited as stated in the case of *Muhammed Bin Hassan v. Public Prosecutor* [1998] 2 MLJ 273 ...

(5) The end result of the learned trial DPP conceding that the presumption under section 37(d) of the DDA was to be invoked was that the prosecution was conceding that the maximum offence that the Accused could be convicted for was an offence punishable under section 39A(2) of the DDA.

(6) The appellant relies on *Public Prosecutor v. Ahmad bin Abdul Razak* [2010] 7 AMR 793, it was held as follows:

> Section 179 of the Criminal Procedure Code ("CPC") is a mandatory provision and cannot be treated as a mere pedantry formality. It mandates that the prosecution not only state the nature of the offence also evidence proposed to be proved against the accused. ... By its failure to disclose in his opening speech, the evidential aspect of such meetings or negotiations at the restaurant between SP8 and SP9 with the accused, the prosecution had thereby failed to comply with the provisions of s. 179 of the CPC. ....

(7) Similarly, in our present case, the said statement of the learned Trial DPP in his opening speech had put the Accused on notice that the maximum evidence the prosecution witnesses could adduce would be for an offence punishable under section 39A(2) for possession. The Accused was therefore prejudiced by the said opening speech and the same had prevented a finding of actual possession.

(8) In the case of *Wjchai Onprom v. PP* [2006] 3 CLJ 724, it was held as follows:

> In the opening statement of facts tendered by the prosecution in lieu of the usual opening statement makes no reference as to whether the prosecution is relying on evidence of actual trafficking or relying upon the presumption under s. 37(da) of the Act. The very first time you find mention of it is in the prosecution's submission at the close of the case, we emphasise that it is contrary to the principles of essential justice to permit the prosecution to meander at will and then, at some point convenient to it, to try to pigeon hole the facts adduced into one or more of the provisions of the Act. If in an appropriate case such a course occasions a miscarriage of justice this Court will have no choice but to intervene and quash the conviction as being unsafe. ...

[22] Essentially the submission was that because the DPP, in his opening statement, spoke of reliance upon the legal presumption of s. 37(d) of the DDA 1952 on *mens rea*, it meant that evidence adduced upon which the High Court made a finding of actual possession must be unreliable, and misled the appellant into believing that the maximum the appellant could be convicted for is an offence under s. 39A(2) of the DDA 1952 and therefore the appellant was prejudiced.

[23] The submission if accepted would enable reliance upon *Muhammed Hassan v. PP* [1998] 2 CLJ 170; [1998] 2 MLJ 273 where the Federal Court has held that the prosecution cannot rely upon a presumption upon a presumption.

[24] We find no support for the appellant's submission from the authorities cited for the cases pertains to the failure to disclose in the opening statement, while in this case, the prosecution was stating the opposite.

[25] In *Wjchai Onprom v. PP (supra)*, no mention was made in the opening statement of facts made in lieu of the usual opening statement, as to whether the prosecution was relying on evidence of actual trafficking or relying upon the presumption under s. 37(da) of the Act. In *PP v. Ahmad Abdul Razak (supra)*, it was held as follows:

> ... By not disclosing in the Opening Speech the evidential aspect of the meetings and/or negotiations at the said restaurant between SP8, SP9 with the accused, "Li" and Michael, prosecution cannot be said to have complied with section 179 CPC. This is a procedural impropriety as it virtually gives notice to the accused that the prosecution would intend not to lead such evidence to prove the guilt of the accused but nevertheless, led this vital evidence during trial. ...

[26] The principle in *PP v. Ahmad Abdul Razak (supra)* is that the opening statement serves as notice of what the prosecution seek to adduce and prove so that the defence has a fair opportunity to focus his cross-examination to test the evidence adduced by the prosecution, and to lay out his defence to the relevant prosecution witnesses.

[27] We observe that while the opening statement of the prosecution mentioned the legal presumption, the penultimate paragraph spoke of other evidence also being relied upon:

> The prosecution will also prove by way of direct and circumstantial evidence as well as documentary evidence. ...

[28] In our view, the opening statement in this case did the very opposite of what was done in error in *Wjchai Onprom v. PP (supra)*. The opening in this case outlined the nature of the case and the evidence being presented by the prosecution to the court. The findings of fact and inferences that may be drawn arises from the assessment made after such evidence is presented, tested and submissions thereon have been heard. The prosecution was

A outlining, perhaps somewhat clumsily, that it could rely on the presumption but it had other direct and indirect evidence of possession. In other words, if direct evidence of possession failed the prosecution would rely upon the presumption. We do not see how this occasions any unfairness or injustice upon the appellant.

B **[29]** We observe also that the passage quoted from *Wjchai Onprom v. PP* is from para. 6 of the judgment. The quotation is incomplete because it continued as follows:

> However, in the instant case it is fortunate that the appellant did not suffer any prejudice through this failure on the part of the prosecution. For it is clear from the notes of evidence recorded by the learned judge, that counsel for the appellant at the trial focused on the relevant issues and does not appear to have been disadvantaged by prosecution's failure to observe the rule of disclosure.

C

[30] Thus, the statement as quoted is not absolute but qualified, in that it D is necessary to look from the evidence whether in fact prejudice was suffered.

[31] We find that the fact reliance upon the presumption of possession under s. 37(d) was mentioned in the opening statement does not preclude presenting evidence of actual possession being adduced where the opening statement disclosed reliance also on evidence of actual possession. The E record does not show any difficulty or disadvantage to the appellant in testing the evidence of actual possession. That being the case, it cannot preclude the High Court from making a finding upon it. The prosecution witnesses do not lose credibility when they testified upon actual possession. It was not put to the witnesses. The submission that the trial DPP must have been aware of F something for him to have made such comments in his opening speech is pure speculation, and that "there after the witnesses must have departed from their initial evidence recorded in the investigation papers thereby affecting their credulity" is not reasoning founded upon any logical basis. In the fourth sub-paragraph of para. 28 of the written submission, the submission fell further G with the statement that the trial DPP had "conceded in his opening speech that the prosecution would rely on the presumption of possession …".

[32] Re-perusing the opening statement, we still could not find any reason to hold that "conceded" was an apt description. We concluded that the submissions were constructed to try to launch the submission:

H

> (4) It is submitted that once the learned Trial DPP conceded in his opening speech that the prosecution would rely on the presumption of possession under section 37(d) of the DDA 1952 then it would mean that if the prosecution is still pursuing the charge for trafficking drugs then they would be asking the Courts to rely and invoke the presumption I possession under section 37(d) of the DDA to invoke the presumption of trafficking under section 37(da) of the DDA. In short the application of

a presumption upon presumption. This is specifically prohibited as stated in the case of *Muhammed Bin Hassan v. Public Prosecutor* [1998] 2 MLJ 273 where it is held as follows: …

[33] We found the submission not coherent and therefore dismissed this ground of appeal.

Grounds 3, 10, 14, 15, 17, 18, 32 And 33: Whether The Police Raiding Party Occupied Room 204

[34] The submission on this ground is that it is impossible that the police were making observation from room 204 because from exh. P5, the sketch plan (RR5:719) room 202 faced room 201 and room 202 is out of the line of sight of any one looking through the peephole of room 204. Further, this was also the observation made by the High Court (see RR1:85 line 9).

[35] It was submitted that furthermore the hotel register showed that the room was occupied by a person named Wong King Tak, from Tubau, with the IC or Passport No. K198502 on 7 February 2003 from 3.22pm onwards and:

(4) Since Ex P4 shows that it is impossible for the police to have been occupying room 204, it follows that they could not have seen or followed the Accused from room 204. They must have arrived at the room from elsewhere. As such the manner in which the drugs were alleged to have been discovered in the unnumbered room as narrated by the police witnesses cannot be believed and they lack credibility. The unknown location of the police party surely throws in to serious doubt any alleged sightings the police may have had of the Accused entering or leaving either room 202 or the unnumbered room. In fact PW5 (ASP Gabriel) testified at Vol. 2, page 204, Lines 21 to 23 as follows "Did you know at that time which room you have to keep under surveillance? No.". Naturally it follows that if he did not know which room to keep surveillance on how could SI Walter have selected a room to keep surveillance from.

[36] In our view, that room 204 was occupied by another person does not preclude the police from accessing it in the course of investigation or surveillance of criminal activity. We examined the cross-examination of PW5. The record shows that the evidence that they observed room 202 from room 204 was not challenged in cross-examination. The cross-examination of PW5 at RR2:205 at line 11 shows the following:

A: He told me Room 204 is the suitable room because we can see the movements of person who came in and out of Room 202.

[37] It shows that it was not so much the door of room 202 that they were watching, but the movements of person or persons who came in and out of room 202. From the sketch plan that is not impossible from room 204.

[38] We, therefore, dismissed this ground of appeal.

A **Grounds 3, 4, 5, 6, 13 and 19: Exclusive Access, Use Care And Management Of The Unnumbered Room**

[39] The submission on this point is that the appellant did not have the exclusive control and use of the unnumbered room, as hotel staff, hotel guests, visitors and strangers could go all over the hotel, and that the
B appellant had made arrangements with PW10 to do his laundry and leave it at the counter or the unnumbered room for the appellant to collect.

[40] The case of *Azizan Yahaya v. PP* [2012] 8 CLJ 405; [2013] 1 MLJ 180 was relied upon that where others have access to a room, the trial judge must consider whether the prosecution had failed to exclude the possibility that
C other persons could have had access to the drawer where the drugs were found, and the onus is not on the defence to prove the possibility of access to the drawer by others.

[41] The High Court, at p. 24 of the grounds of judgment (see Supp RR:24-
D 26), had clearly considered the question of access to the unnumbered room. The facts did not call for the application of *Azizan Yahaya v. PP* (*supra*):

> 1. The Accused obtained the key (Exhibit P6[A]) from PW1 to keep his things;
>
> 2. The Accused refused to give the key to PW1 when the latter asked for
E its return;
>
> 3. PW1 could not enter the unnumbered room as it was at all times under lock and key when the Accused was in possession of the key;
>
> 4. No laundry belonging to the Accused was found in the unnumbered room which was clean and tidy; the only items in the unnumbered room
F were the box (Exhibit P41) and its contents, the folded chair (Exhibit P7) and other items in the photograph Exhibit P8;
>
> 5. The dubious motive of the Accused of using the unnumbered room when his personal belongings were not found in the room;
>
> 6. The Accused was seen entering the unnumbered room after he came
G out of Room 202;
>
> 7. The key (Exhibit P6[A]), which he got from PW1 was still inside the doorknob of the door to the unnumbered room;
>
> 8. The accused was seen holding the box (Exhibit P41) and its contents;
>
H 9. When the Accused was seen holding the said box, its lid was open; and
>
> 10. The Accused was nervous, scared, surprised, speechless and shivering.

[42] The submissions before us were confined to the fact that others had access to the unnumbered room but did not address the above-mentioned
I findings of fact by the High Court.

[43] We, therefore, dismissed this ground of appeal.

Ground: Oblique Motive/Was The Appellant Holding the box when the police party entered the unnumbered room

[44] The ground of oblique motive was raised in ground 17 of the memorandum of appeal. The foundation for the submission is that the appellant's version is that he never held the box while the police witnesses testified that they saw the appellant holding the box ('P41') when they entered the unnumbered room and that the appellant then dropped the box.

[45] Upon this foundation, the submission was made that the police had the opportunity to lift fingerprints from the box and its contents. It was further submitted that contrary to the testimony of the police officers, the Search List, marked as exh. 43:

> 37. ... stated 1 dark box containing 1 transparent plastic package containing dried leaves wrapped with dried aluminium foil and 10 transparent plastic packages containing dried leaves was found by L/Kpl/D 129318 in an empty room on the 2nd Floor of Hotel Sri Dagang Inn, Bintulu. The same is stated of the other items found. The pertinent words there in are "dijumpai oleh ... di dalam bilik kosong". It is submitted that if the box and its contents were seized from the Accused, then the Search List would states so by using the words "Dirampas dari ..." instead of "dijumpai". The vital piece of evidence shows that the Accused never held the box containing the alleged drugs.

[46] The further submission was made that:

> 38. The Search List not only shows that the Accused never held the box P41 but also that there was nothing else in the room where the box was found. The oral evidence shows there was a chair. The Search List also shows that not all the exhibits were found in the box as the police witnesses seem to suggest. The Search List shows that the items listed as 2 and 3 were not found in the box and there are the Ang Paw envelope containing 6 transparent plastic packets of crystalline substance and the Tanita weighing machine. It is submitted that since the Search List (Exhibit P43) tells a materially different story from that narrated by PW5 and the other policemen, the police witnesses cannot be considered credible any more and hence what ever their oblique motive is comes into play. The Search List in fact corroborates the Accused version of events.

[47] If anything the submission for the appellant acknowledges that the Search List is incomplete and not definitive as well. It would therefore carry little weight, if at all, to support the submission made for the appellant's version. *Gooi Loo Seng v. PP* [1993] 3 CLJ 1; [1993] 2 MLJ 137 is distinguishable in that it was not the case that the search list was not complete or definitive as the submission for the appellant himself established in the case before this court. There is no similarity with the said case. The evidence shows that L/Kpl/D 129318 took the box that the appellant dropped, and this is not inconsistent with the statement in the search list that L/Kpl/D 129318 took the box from the room.

[48] Findings and inferences are drawn from the evidence before the court. Adverse inferences from non-production of evidence are based upon such evidence being established: (a) to exist and (b) is being withheld. There is no evidence of withholding in this case.

[49] We, therefore, dismissed this ground of appeal.

Ground: The Defence Case

[50] It was submitted that:

> 42. The Defence is set out in his oral evidence as well as his cautioned statements. Essentially the Accused maintains that on 7/2/2003 at about 7 p.m. he had come out of room 202 and went down to the counter and told the receptionist a male person that he wanted to collect his laundry and towels and was given the key to the room. Then he had gone to room 202 to ease himself and then proceeded to the unnumbered room and inserted the key into the lock and then went to switch on the lights which was located outside the room. While he was out side the room he turned around and 2 men outside the door of the unnumbered room and then one of them pointed a gun at him. Only then was the Accused brought into the room and the box found. The Accused maintained that there was only one key in the lock of the unnumbered room and he was holding the key to his own room. The Accused stated that he took the key to the unnumbered room from a relief staff but he was not sure that person was Mohd Nazri or somebody.
>
> 43. In this context Mohd Nazri (PW7) had never testified on the issue of whether he handed over any key to the Accused but at Vol. 3, page 371, lines 3 to 15 shows that PW7 had reported to another counter staff at about 7 pm. That person was a young man in his mid twenties and that person had called PW1 to confirm whether PW7 was to take over his duties for the night. It is this person who could have handed the key to the unnumbered room. The existence of this person together with the fact that another key to the unnumbered room may have been supplied by the owner to yet another relief staff throws in doubt that the Accused had exclusive access to the unnumbered room.
>
> 44. The fact that the key to the unnumbered room was not attached to the key to room 202 is supported by the fact that PW9 had testified at Vol. 3, page 400, Lines 21 to 23 that the key to every room has a key chain attached to it.
>
> 45. In short, the defence version is not only supported by the cautioned statements in the material part but also by the prosecutions evidence such as the search list, the existence of another relief receptionist and PW9's confirmation that the key to room 202 had a key chain attached to it.
>
> 46. It is also submitted that if the Methamphetamine in room 202 belonged to the Accused (which id denied) then it would show that the accused was more likely be in possession of the same type of drugs and not cannabis.

[51] The record of proceedings and the grounds of judgment show that the High Court:

(a) considered its duty under s. 182A of the CPC;

(b) having done so proceeded to consider at the end of the prosecution case whether the prosecution had made out a *prima facie* case against the appellant on the two charges; and

(c) having found that the prosecution had done so, had called upon the appellant to enter upon his defence; and

(d) heard and considered the defence and submissions at the end of the case, before making a finding whether the prosecution has proved its case beyond reasonable doubt, and to convict the appellant on both charges.

[52] The High Court took guidance from *PP v. Kenneth Fook Mun Lee & Another Appeal* [2006] 1 CLJ 499; [2006] 2 AMR 44; *Abdullah Jacomah v. PP* [2002] 8 CLJ 1; [2002] 6 MLJ 324; *Chang Lee Swee v. PP* [1984] 1 LNS 134; [1985] 1 MLJ 75 and *Mohamed Shariff v. PP* [1964] 1 LNS 114; [1964] MLJ 64 as to its duty at the end of the defence case, and *PP v. Saimin & Ors* [1971] 1 LNS 115; [1971] 2 MLJ 16; *PP v. Sam Kim Kai* [1960] 1 LNS 99; [1960] MLJ 265; *Dato Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] 2 MLJ 232, *Ayoromi Helen v. PP* [2005] 1 CLJ 1, as to the duty of an accused in the defence case and what is a reasonable doubt.

[53] The High Court (see Supp RR:53-60) considered the defence case in detail, and *inter alia*, took guidance from:

(a) *PP v. Abang Abdul Rahman* [1982] 1 MLJ 46 as to the effect of failure of the defence to have laid out essential and material parts of its case to relevant prosecution witnesses during the cross-examination of the said witnesses.

(b) *PP v. Abang Abdul Rahman (supra)*, where it was held that:

> ... To my mind nothing would be more absolutely unjust that not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and not having given them such an opportunity, to ask the jury afterwards to disbelieve what they said, although not one question has been directed either to their credit or to the accuracy of the facts they have deposed to.

(c) *Alcontara a/l Ambross Anthony v. PP* [1996] 1 MLJ 209 where it was explained that:

> Speaking generally, in a criminal trial that the whole point and purpose of the defence having to put its case to such the prosecution witnesses as might be in a position to admit or deny it is to enable the prosecution to check on whether an accused's version of the facts is true or false, and thus avoid the adverse

A comment, that the defence is a recent invention - in other words, "kept up its sleeve" - as it were - and revealed for the first time when the accused makes his defence from the witness box or the dock, thus detracting from the weight to be accorded to the defence ...

B **[54]** Having so guided itself, the High Court had considered all of the evidence including that of DW1 to determine whether the defence put forward was capable of raising a reasonable doubt in the prosecution case before, finding that the prosecution had successfully proved its case in respect of both charges beyond reasonable doubt, convicting the appellant thereon and to pass sentence.

C

[55] What is a reasonable doubt is not a matter of bafflement. It is however a term notoriously difficult to define. Lord Denning in *Miller v. Minister of Pensions* [1947] 2 All ER 372, 373, explained it thus:

D That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with sentence 'of course, it is possible but not in the least probable,' the case is proved beyond

E reasonable doubt ...

It is true that under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is

F not the law of the land.

[56] Reasonable doubt is the doubt entertained by a prudent man that is not the imaginary, fanciful, trivial or the merely possible doubt or lingering suspicion. That a doubt is possible but not in the least probable is not a reasonable doubt. It means that a reasonable doubt is not merely a story,

G version, hypothesis, theory or belief, but is a finding derived by reason and common sense from the facts in evidence in the case. That the prosecution relies upon the evidence of policemen and other witnesses does not make their evidence inherently suspect and untrustworthy. They have no reason to lie. The scrutiny is whether there are such unexplainable flaws in their

H testimony as would make their testimony unsafe to rely upon.

[57] The defence version was outlined in the cautioned statement that the appellant made. The cross- examination comprised questions that generally touch upon the defence version, but the substance of the defence as such was not put to confront the relevant witnesses. His testimony (RR4:532 ff)

I focused upon his stay in room 202, description of the store room and his version of being stopped by CPL Mianus and SI Walter, pistol pointed at him, being brought into the store room where a box was found and that they said it was his and that he replied it was not his.

[58] There was no testimony as to the unnumbered room in his examination-in-chief. In cross-examination, the appellant appeared to use the terms store room and unnumbered room interchangeably in respect of the room where the boxes containing the drugs was found. This is also clear from the re-examination. He did not dispute a key was needed to open the door to that room.

[59] Scrutiny of the appreciation of the evidence and reasoning of the High Court shows attention to and consideration of evidence that is as meticulous as it is detailed.

[60] For the foregoing reasons, we concluded that there was no error by the High Court, and that the grounds raised hold no merit. Accordingly, we dismissed the appeal and affirmed the conviction and sentence by the High Court.